UNITED
NATIONS

E

Economic and Social
Council

Distr.
GENERAL

E/CN.4/Sub.2/1997/SR.33
1 September 1997

Original: ENGLISH

COMMISSION ON HUMAN RIGHTS

SUB-COMMISSION ON PREVENTION OF DISCRIMINATION AND
PROTECTION OF MINORITIES

Forty-ninth session

SUMMARY RECORD OF THE 33rd MEETING

Held at the Palais des Nations, Geneva,
on Wednesday, 27 August 1997, at 10 a.m.

Chairman: Mr. BENGOA

CONTENTS

PROMOTION AND PROTECTION OF HUMAN RIGHTS OF CHILDREN AND YOUTH (continued)

QUESTION OF THE VIOLATION OF HUMAN RIGHTS AND FUNDAMENTAL FREEDOMS, INCLUDING POLICIES OF RACIAL DISCRIMINATION AND SEGREGATION AND OF APARTHEID, IN ALL COUNTRIES, WITH PARTICULAR REFERENCE TO COLONIAL AND OTHER DEPENDENT COUNTRIES AND TERRITORIES: REPORT OF THE SUB-COMMISSION UNDER COMMISSION ON HUMAN RIGHTS RESOLUTION 8 (XXIII) (continued)

This record is subject to correction.

Corrections should be submitted in one of the working languages. They should be set forth in a memorandum and also incorporated in a copy of the record. They should be sent within one week of the date of this document to the Official Records Editing Section, room E.4108, Palais des Nations, Geneva.

Any corrections to the records of the public meetings of the Sub-Commission at this session will be consolidated in a single corrigendum to be issued shortly after the end of the session.

GE.97-13908 (E)

CONTENTS (continued)

REVIEW OF FURTHER DEVELOPMENTS IN FIELDS WITH WHICH THE SUB-COMMISSION HAS BEEN OR MAY BE CONCERNED:

(a) THE FIFTIETH ANNIVERSARY OF THE ADOPTION OF THE UNIVERSAL DECLARATION OF HUMAN RIGHTS;

(b) REVIEW OF DEVELOPMENTS CONCERNING RECOMMENDATIONS AND DECISIONS RELATING, INTER ALIA, TO:

(i) PROMOTION, PROTECTION AND RESTORATION OF HUMAN RIGHTS AT NATIONAL, REGIONAL AND INTERNATIONAL LEVELS;

(ii) ELIMINATION OF ALL FORMS OF INTOLERANCE AND OF DISCRIMINATION BASED ON RELIGION OR BELIEF;

(iii) ENCOURAGEMENT OF UNIVERSAL ACCEPTANCE OF HUMAN RIGHTS INSTRUMENTS;

(c) REVIEW OF ISSUES NOT PREVIOUSLY THE SUBJECT OF STUDIES BUT WHICH THE SUB-COMMISSION HAD DECIDED TO EXAMINE:

(i) IMPLICATIONS OF HUMANITARIAN ACTIVITIES FOR THE ENJOYMENT OF HUMAN RIGHTS;

(ii) TERRORISM AND HUMAN RIGHTS;

(iii) INTERNATIONAL PEACE AND SECURITY AS AN ESSENTIAL CONDITION FOR THE ENJOYMENT OF HUMAN RIGHTS, ABOVE ALL THE RIGHT TO LIFE;

(d) OTHER NEW DEVELOPMENTS:

(i) ADVERSE CONSEQUENCES OF THE TRANSFER OF ARMS AND ILLICIT TRAFFICKING IN ARMS ON THE ENJOYMENT OF HUMAN RIGHTS;

(ii) ARBITRARY DEPRIVATION OF NATIONALITY.

The meeting was called to order at 10.20 a.m.

PROMOTION AND PROTECTION OF HUMAN RIGHTS OF CHILDREN AND YOUTH (agenda item 10 bis) (continued)

1. Mr. WEISSBRODT said seven years had passed since the Convention on the Rights of the Child had entered into force. It had been ratified by 191 States; no other human rights treaty had received comparable support. While he was chagrined that his own country had only signed, but not ratified, it, he hoped that by analysing the important work of the Committee on the Rights of the Child he could make the Convention more effectively used everywhere and eventually ratified by the United States of America.

2. In view of the almost universal ratification of the Convention, guidelines should be developed for States parties in order to facilitate the implementation of children's rights and possibly to encourage the few remaining countries to ratify the text. So far, there were no General Comments for the Convention, and the Sub-Commission should therefore recommend that the Committee on the Rights of the Child should begin to elaborate General Comments, specifically on articles 2, 37 and 40 of the Convention, with the aim of clarifying States' obligations arising under the Convention and also of contributing to a growing awareness of child-related problems. Instead of advocating new standards and new procedures within an already overwhelmed system, the Sub-Commission should focus on the effective implementation of existing standards.

3. The principle of non-discrimination contained in article 2, paragraph 1, of the Convention was one of its essential pillars, and the Committee on the Rights of the Child had noted that its application could not be dependent upon budgetary resources. The importance of that article had been underlined by the Committee's decision to include it among the four principles which were essential obligation clauses for the Convention. Its importance was also apparent when compared with article 2 of the International Covenant on Civil and Political Rights, in which States parties were given broad discretion in applying similar provisions in connection with their financial and socio-economic abilities.

4. The Committee on the Rights of the Child, however, took a much stronger view of how article 2 should be applied with regard to children. It had noted that each of the various elements of article 2 and each form of discrimination should be included in national law and should be applied. It had looked at the need to ensure that children enjoyed equally the rights set forth in the Convention, not only in legislation, but also in reality. It had also considered the issue of giving special benefits to disadvantaged groups of children, stating that such discrimination was not forbidden by the Convention itself. One State party had entered a reservation under article 30 because it considered that preferential treatment for indigenous children was incompatible with its national non-discrimination clause, but the Committee had expressed great concern about that reservation.

5. Article 2, paragraph 1, not only prohibited child discrimination because of the child's own race but also because of his or her parent's or legal guardian's race, etc.

6. Other groups identified by the Committee as particularly exposed to discrimination included female children. It further noted persistent discriminatory attitudes towards girls reflected in son-preference, persistence of early marriages, lower school attendance, higher drop-out and lower literacy rates. Girl children were primary victims of sale, trafficking and child labour, sexual and other forms of exploitation.

7. Children and families infected with AIDS or AIDS orphans were also of concern to the Committee.

8. It was also preoccupied about "geographical discrimination" and the need to take safeguards to avoid the risk of disparities in the standard of living and the enjoyment of economic and social rights by children, particularly in the field of education.

9. It defined rural children and children working or living in the streets in order to survive as subjects of particular concern. In the case of street children, it regretted their institutionalization in boarding schools, recommended the training of social, legal or educational workers, pointed out the lack of data on the situation of those children and the discriminatory attitudes towards them, particularly among law enforcement officials. It expressed grave concern over their life-threatening situation, many of them being victims of "social cleansing" campaigns.

10. The Convention was the first international human rights instrument to enumerate disability as a prohibitive ground of discrimination.

11. The Committee had also focused on children of indigenous origin as a particularly vulnerable group as well as children born out of wedlock.

12. He hoped that his remarks had demonstrated that the Convention on the Rights of the Child provided appropriate safeguards to assure the principle of non-discrimination to all children. General Comments developed by the Committee on the Rights of the Child would therefore contribute considerably to a growing awareness of child-related problems and foster a more effective implementation of existing standards. He therefore proposed that the Sub-Commission should adopt a decision encouraging the Committee on the Rights of the Child to draft General Comments on articles 2, 37 and 40 of the Convention.

13. Mr. ALFONSO MARTÍNEZ said that since the mid-1980s, the United Nations, including the Sub-Commission, had been paying more attention to the problems of children and youth. Those efforts had culminated in the adoption and entry into force of the Convention on the Rights of the Child, which had since become a part of the international jus cogens.

14. The Working Group on Contemporary Forms of Slavery had in 1997 placed particular emphasis on the situation of children and youth, and its recommendations in that regard, both general and specific, constituted a point of departure of special importance to the Sub-Commission in its future consideration of the subject. He stressed the importance of the work, global vision and cooperation done since its inception by the United Nations Children's Fund (UNICEF), as well as by non-governmental organizations (NGOs).

When he had suggested a separate agenda item on the rights of children, he had not been worried by the fact that other United Nations bodies were already dealing with it, as it was not the Sub-Commission's function to duplicate the work of other organs. The work of its working groups consisted of contributing to the cooperation between the various United Nations organs and NGOs, in order to achieve the practical implementation not only of the Convention but of all international legislation.

15. He agreed that it was not the Sub-Commission's function to encourage new international norms and standards and that the Committee on the Rights of the Child should adopt General Comments on those provisions of the Convention which could lend themselves to divergent interpretations.

16. UNICEF's report on The State of the World's Children, 1997 described the progress in making the rights covered by international and national law a reality. It also discussed problems in the situation of children and youth. Much remained to be done by the United Nations system as a whole, as well as by the Sub-Commission, which should continue to consider the subject each year based on the recommendations of its Working Group on Contemporary Forms of Slavery and on information provided by UNICEF and NGOs.

17. Mrs. DAES said that children were the future of the world; not only UNICEF but all other United Nations bodies and organs should be involved in order more effectively to implement the Convention on the Rights of the Child and the relevant recommendations on the protection of certain rights of the child of the Committee and the special rapporteurs. She congratulated Mr. Weissbrodt on a thought-provoking and constructive statement which identified the children of indigenous peoples as a particularly vulnerable group. Special measures should be taken by all concerned at the national, regional and international levels, in particular to secure positive discrimination for the protection of indigenous children.

18. Ms. HILAL (International Commission of Jurists - ICJ) said that a review of the situation of human rights throughout the world could not be complete without consideration of the human rights of children, who constituted the majority of the world's population. Particularly troubling were the human rights violations that occurred in the context of armed conflicts, such as in Rwanda, Burundi, the Congo and Cambodia.

19. The IJC commended the important action taken by the Sub-Commission on child labour, child prostitution, juvenile justice and the inequality of the girl child under agenda items 6, 5 (a) and 9 but it believed that the Sub-Commission should consider the many violations of children's rights under a unified agenda item concerning "the human rights of children and youth". By so doing, it could focus more attention on the obstacles impeding the full realization of children's human rights and could carry out studies that complemented the work of the Committee on the Rights of the Child. The near-universal ratification of the Convention did not eliminate the need to continue defining jurisprudence on children's rights. The Sub-Commission, through in-depth studies of children's issues, could serve the Committee on the Rights of the Child and other United Nations bodies by prioritizing the fight against the oppression of children. It was precisely the Sub-Commission which had the flexibility and the sensitivity to examine those paramount

challenges to the human rights of children. Furthermore, the Sub-Commission's cohesive and deliberate consideration of children's human rights would help to overcome the more fragmented efforts that it was currently undertaking.

20. The CHAIRMAN said the Sub-Commission had concluded its consideration of agenda item 10 bis.

QUESTION OF THE VIOLATION OF HUMAN RIGHTS AND FUNDAMENTAL FREEDOMS, INCLUDING POLICIES OF RACIAL DISCRIMINATION AND SEGREGATION AND OF APARTHEID, IN ALL COUNTRIES, WITH PARTICULAR REFERENCE TO COLONIAL AND OTHER DEPENDENT COUNTRIES AND TERRITORIES: REPORT OF THE SUB-COMMISSION UNDER COMMISSION ON HUMAN RIGHTS RESOLUTION 8 (XXIII) (agenda item 2) (continued)

Statement by the Chairman

21. The CHAIRMAN read out the text of his statement under agenda item 2:

"Members of the United Nations Sub-Commission on Prevention of Discrimination and Protection of Minorities have asked me to express our profound concern for the suffering of the Palestinian people - particularly the heads of households - men and women - who have been subject to severe restrictions of movement and thus are unable to feed and care for their families in Gaza and in other territories occupied by Israel.

The Sub-Commission condemns all acts of terrorism and violence wherever they originate, and wishes to condemn strongly the recent double suicide attack in Jerusalem, causing the death of innocent people and the blockade imposed for nearly four weeks, which penalizes innocent persons.

The Sub-Commission, in realizing the impact of the blockade on the basic human rights of the Palestinian people, calls upon the Israeli Government to put an end to the blockade and other measures. It also calls on all parties to make every effort so that a positive dialogue can take place once again and peace restored.

In that regard, the Sub-Commission hopes for an early resumption of talks and the successful conclusion of a just and lasting peace in the region."

REVIEW OF FURTHER DEVELOPMENTS IN FIELDS WITH WHICH THE SUB-COMMISSION HAS BEEN OR MAY BE CONCERNED:

(a) THE FIFTIETH ANNIVERSARY OF THE ADOPTION OF THE UNIVERSAL DECLARATION OF HUMAN RIGHTS;

(b) REVIEW OF DEVELOPMENTS CONCERNING RECOMMENDATIONS AND DECISIONS RELATING, INTER ALIA, TO:

(i) PROMOTION, PROTECTION AND RESTORATION OF HUMAN RIGHTS AT NATIONAL, REGIONAL AND INTERNATIONAL LEVELS;

(ii) ELIMINATION OF ALL FORMS OF INTOLERANCE AND OF DISCRIMINATION BASED ON RELIGION OR BELIEF;

(iii) ENCOURAGEMENT OF UNIVERSAL ACCEPTANCE OF HUMAN RIGHTS INSTRUMENTS;

(c) REVIEW OF ISSUES NOT PREVIOUSLY THE SUBJECT OF STUDIES BUT WHICH THE SUB-COMMISSION HAD DECIDED TO EXAMINE:

(i) IMPLICATIONS OF HUMANITARIAN ACTIVITIES FOR THE ENJOYMENT OF HUMAN RIGHTS;

(ii) TERRORISM AND HUMAN RIGHTS;

(iii) INTERNATIONAL PEACE AND SECURITY AS AN ESSENTIAL CONDITION FOR THE ENJOYMENT OF HUMAN RIGHTS, ABOVE ALL THE RIGHT TO LIFE;

(d) OTHER NEW DEVELOPMENTS:

(i) ADVERSE CONSEQUENCES OF THE TRANSFER OF ARMS AND ILLICIT TRAFFICKING IN ARMS ON THE ENJOYMENT OF HUMAN RIGHTS;

(ii) ARBITRARY DEPRIVATION OF NATIONALITY

(agenda item 11) (E/CN.4/Sub.2/1997/24, 25, 27 and Add.1, E/CN.4/Sub.2/1997/28, 34 and 38)

22. The CHAIRMAN said that, due to lack of time, in selecting speakers priority would be given to those NGOs that made joint statements with other NGOs.

23. Mr. FAN Guoxiang, speaking on agenda item 11 (a), said that the Universal Declaration of Human Rights, the fiftieth anniversary of which was approaching, was of profound significance in the history of humankind, as having been the first worldwide acknowledgement of the importance of human rights and the first attempt to elaborate a comprehensive list of those rights to be promoted by the rule of law. It would be recalled that at the first session of the United Nations General Assembly, held in London in 1946, a number of delegations had wanted to secure the adoption of a declaration of rights. Panama for instance, had gone so far as to provide a draft "declaration of essential human rights", which it wished to see appended to the Charter of the United Nations. However, some major Powers had insisted on the need to lay down a safeguard clause protecting States' sovereignty, a clause that had later become article 2 (7) of the Charter. Consequently, that motion had not succeeded.

24. The following year a drafting committee had begun to prepare two documents: one in the form of a declaration and one in that of a convention. Following 85 meetings of the Third Committee, at which no fewer than 1,400 votes had been taken on its wording, the Universal Declaration of Human Rights had been adopted and proclaimed on 10 December 1948, with 48 member States voting in favour, none against and 8 abstentions. The President of the

General Assembly had hailed its adoption by a large majority as a remarkable achievement, but had stressed that the Declaration marked only a first step, as it was not a binding convention and no provision existed for enforcement. Yet it had been a step forward in the great evolutionary process.

25. While the Declaration was an important historical document, it also had its historical limitations. In the 49 years since its proclamation, membership of the United Nations had more than tripled, and it was only natural that newly independent developing countries should have their own interests and concerns. Over that period, some 80 international human rights instruments had emerged, as well as the four Geneva Conventions and the two Protocols thereto, devoted to humanitarian law. Those developments served to indicate that the Declaration had been continuously enriched with the passage of time. Indeed, human rights, both factual and conceptual, could not remain static. Historical developments would inevitably offer a new basis on which to build fresh ideas on human rights, which in turn would contribute to a fuller public awareness of the rights and interests of the people, enabling further social progress to be achieved.

26. Turning to the broader issue of further developments in fields with which the Sub-Commission might be concerned, he cited a Chinese proverb which ran: "Lessons and experiences learned in the past teach us what to do in the future". In considering the further development of the Sub-Commission, it was helpful to review the evolution of the Commission's and Sub-Commission's mandates. The latter, adopted in 1947, under which the Sub-Commission had no power to take any action in regard to any complaints concerning human rights, had remained unchanged until the adoption by the Economic and Social Council of its resolution 1235 (XLII), concerning the public procedure, in 1967, and of its resolution 1503 (XLIII), concerning the confidential procedure, in 1970. Meanwhile, in the early 1950s it had become apparent that powerful forces in the United States of America were increasingly opposed to the principle of making human rights a matter of enforceable treaty obligations. In 1951 Senator Bricker and others had proposed a Senate draft resolution condemning the draft covenants prepared by the Commission as prejudicial to the rights already protected under the United States Bill of Rights, and had urged the United States Government to withdraw from further negotiations with respect to the human rights covenants. Eventually, that draft resolution had not been implemented. With the advent of the Eisenhower administration in 1953, Secretary of State Dulles had announced that the United States intended to encourage the promotion everywhere of human rights and fundamental freedoms, but to favour methods of persuasion, education and example rather than formal undertakings. He had added that the United States did not intend to become a party to the Covenants or even to submit them to the Senate for its consideration.

27. As to the comprehensive report to be prepared by the Sub-Commission on human rights situations throughout the world, it had been requested to undertake an initial "study" of periodic reports on the implementation of the Covenants, which had previously been requested from Governments under a voluntary reporting system. In 1967 the Sub-Commission's rapporteur had drafted a report containing a summary of the periodic reports, with an appended summary of the comments made by NGOs and the replies of Governments

to those comments. That appendix had provoked a major debate in the Sub-Commission, and had finally been deleted from the report after a vote.

28. Under Commission resolution 8 (XXIII) and Economic and Social Council resolution 1235 (XLII), the Sub-Commission had been required to prepare a report containing information "from all available sources" on violations of human rights. In 1967, in its first and only report under the new procedure, it had referred to South Africa and some other countries in Europe and Latin America. After a heated debate in the Commission, the outcome had been that no decision was taken. Thus, the Sub-Commission had since prepared no single or comprehensive report.

29. Nearly 30 years later, similar initiatives had again been made by a few members of the Sub-Commission. In 1995 a draft resolution (E/CN.4/Sub.2/1995/L.8) had been submitted in which it was observed that there was a high degree of correlation between special rapporteurs' comments on failures by States to cooperate fully with the human rights monitoring systems and the continuing allegations made against States under item 6. Thus, more than 20 countries had been censured in one single resolution. A number of experts from the developing countries had wondered why it was that not a single country of the Western world was targeted. The reply had been that those countries cooperated with the United Nations. The draft resolution had eventually been withdrawn.

30. In 1996 a new draft resolution (E/CN.4/Sub.2/1996/L.5) had been submitted on the subject of country review methods. A simple comparison between that draft resolution and draft resolution E/CN.4/Sub.2/1995/L.8 revealed that both were designed to secure the same objective. Draft resolution L.5, doomed to failure, had been withdrawn by the sponsors themselves. At the current session, rumours had circulated concerning the preparation of a working paper to include both the views of NGOs and those of the Governments concerned. In his view, any repetition of those efforts, which the Sub-Commission's work over the past 30 years had shown to be futile, would not be advisable.

31. Mrs. KOUFA, introducing her working paper on terrorism and human rights (E/CN.4/Sub.2/1997/28), said that its intention was to present only those issues central to an understanding of the human rights dimension of terrorism, together with some methodological considerations regarding future work in that area. The introduction (paras. 1-6) began by reviewing the various Sub-Commission and Commission resolutions entitled "Human rights and terrorism", as well as the relevant part of the Vienna Declaration and Programme of Action. It also alluded to earlier resolutions of the Commission and the Sub-Commission dealing with the consequences for the enjoyment of human rights of acts of violence committed by armed groups that spread terror among the population; and to the activity of the General Assembly in the struggle against international terrorism since as far back as 1972.

32. Debates on the topic in the Sixth Committee and in three ad hoc committees established by the General Assembly had revealed divergent opinions among member States on many fundamental issues, including the definition and underlying causes of international terrorism and measures to be taken to

prevent and punish it. There was general agreement that terrorism jeopardized the constitutional order, territorial integrity and security of States. However, it also jeopardized the rights and freedoms of innocent people, while at the same time provoking violations of human rights by Governments that overreacted to terrorism. Thus, there was an inescapable link between terrorism and human rights violations. Terrorism provided a severe test for the idea of fundamental rights that underlay the creation of the United Nations. Yet it was not until after the World Conference on Human Rights that the General Assembly had started to adopt resolutions on "Human rights and terrorism". Like the corresponding Commission and Sub-Commission resolutions on the topic, all those resolutions contained a preambular paragraph expressing serious concern at gross violations of human rights perpetrated by terrorist groups. However, there were also conflicting views as to the characterization of acts of violence committed by terrorist groups as breaches of human rights, as well as on such fundamental questions as what acts constituted terrorism; the circumstances in which acts of terrorism involved violations of human rights; the dividing line between terrorism and guerrilla warfare, and between nationalist movements and terrorists pure and simple; and the balance to be struck between controlling terrorism and protecting human rights. Thus, member States were still far from achieving unified thinking on some of the core issues involved in the relationship between terrorism and human rights. The Sub-Commission should further investigate those core issues, and address certain areas that had not yet been considered.

33. The substantive part of her working paper concerned the phenomenon of terrorism and its human rights dimension, and indicated some problem areas that would need to be examined and analysed in the framework of a study on terrorism and human rights, should the Sub-Commission decide to undertake such a study. One such area was contemporary terrorism, a new breed of violence in terms of technology, globalization, brutalization and mass victimization. By exploring the real nature of contemporary terrorism and the danger of overreaction by Governments, the Sub-Commission could contribute to striking the requisite balance between the imperatives of defending democratic society and of safeguarding human rights and freedoms.

34. Terrorism also posed a threat to peaceful international relations and cooperation. That was another important problem area, in view of the fact that the continuing controversy surrounding wars of national liberation and motives justifying violence was one of the major obstacles to a universally accepted definition of terrorism. The transnational character of most terrorist events and the very limited effectiveness of existing anti-terrorist international treaties were other areas that would also need to be addressed. The international community had thus far failed to reach agreement on general control of terrorism, but had managed to finalize a number of global and regional conventions dealing with specific issues such as hijacking and attacks on diplomats and military personnel. Those conventions criminalized the acts they covered regardless of whether, in each specific case, they could be described as terrorism, and included the obligation to extradite or prosecute. That obligation limited their effectiveness, since States usually balanced their desire to eliminate terrorism against preservation of their own discretion as to whether to surrender alleged terrorists.

35. Perhaps the most important problem area was the very concept of human rights. According to traditional concepts of international law, human rights were protected and violated by States; for, generally speaking, they involved obligations of States towards individuals. Recently, however, developments in international humanitarian law, authoritative pronouncements in the United Nations and elsewhere and a respectable body of theory pointed towards a modification of the traditional position that private individuals or groups were not capable of violating human rights. An objective assessment should be made of whether, and if so to what extent, international human rights law was moving beyond the traditional dichotomy of individual versus State towards the creation of obligations applicable also to private individuals and other non-State actors, including liberation movements and terrorist organizations.

36. For pragmatic reasons, she had made no attempt to define terrorism in her working paper. She had also considered it both premature and counter-productive to attempt a definition before the Sub-Commission determined what issues it considered worth developing, bearing in mind that its work should not overlap with the activities of other United Nations bodies responsible for dealing with the problem of suppressing international terrorism.

37. The last part of her working paper dealt with methodological questions relating to the future work of the Sub-Commission, and recommended that a study should be undertaken, as the issues relevant to the question were numerous, complex and controversial and also raised problems relating to the overall "philosophy" of human rights. Furthermore, the Sub-Commission should identify priority areas or topics, and should decide to what extent it wished to go in the analysis of other issues. Thereafter, it might wish to address United Nations and other global and regional efforts to control terrorism, as well as measures taken at national level, based on information available from all sources. Finally, other issues such as the connection between terrorist groups and transnational organized crime, or the growth in the post-cold-war era of terrorist activity by ethnic and national minorities, could also be addressed, as appropriate. A preliminary report might be submitted to the Sub-Commission at its fiftieth session on the basis of her working paper, with particular attention paid to the priorities and instructions established by the Sub-Commission. That preliminary report could then be considered by the Sub-Commission and Governments, enabling further instructions and issues to be formulated, a progress report to be presented at the fifty-first session, and the final report to be presented at the fifty-second session.

38. Mr. FIX ZAMUDIO said that Mrs. Koufa's working paper on terrorism and human rights (E/CN.4/Sub.2/1997/28) clearly expounded the complex problem of terrorism and its influence on violations of human rights and fundamental freedoms. While it was true that terrorism had always existed, its influence on violations of human rights had grown in recent years, for various reasons, including the development of more sophisticated instruments of destruction and the reporting of terrorist acts in the national and international media.

39. The author referred to the growing activity of the General Assembly in the fight against international terrorism. The Organization of American

States (OAS) had also shown its concern at terrorism in the American continent, and had convened a governmental meeting on the question, held in Lima, Peru, in 1995.

40. One of the questions stressed by Mrs. Koufa was obstacles to coming up with a generally accepted definition of international terrorism. He was convinced that it would be possible, albeit difficult, to find a concept of terrorism that could be used as a working hypothesis, as had happened in the case of the concepts of indigenous populations and minorities.

41. One of the major questions raised by contemporary terrorism was the transformation of the traditional concept of international responsibility of States for violations of human rights on their territory. A first step towards overcoming that problem was to be found in Protocol II to the Geneva Conventions, which could be applied to irregular armed forces. However, its application required the recognition that few Governments were prepared to concede where their internal conflicts were concerned.

42. Furthermore, contemporary terrorism could emanate from many sources. In the case of terrorism promoted or tolerated by States, there was no problem regarding their international responsibility, even if the terrorist acts were committed in the territory of other States. But terrorism could also emanate from irregular armed groups, such as insurrectionists, paramilitary forces opposing them, or nationalist, ethnic, political or religious organizations. Moreover, there had recently been an increase in terrorist acts committed by organized criminal groups, especially drugs traffickers. The question of States' international responsibility arose with regard to those groups. A transformation could already be seen at domestic level, where certain instruments created to protect persons against violations of their rights by the public authorities, such as habeas corpus and amparo, had been extended to cover the conduct of private-sector institutions whose power had increased in recent years as a result of the privatization of public services. That extension had started with the Samuel Kot case in the Supreme Court of Argentina in 1958, and had spread to other Latin American countries, signifying the recognition that not only the public authorities but also private groups could violate human rights, sometimes to a greater extent than public authorities. An important body of case law on that matter already existed in Latin America. The German doctrine of Drittwirkung, concerning the participation of individuals in violations of human rights, was also significant.

43. Lastly, he said that he endorsed the methodological issues raised in the working paper, and thus supported the proposal that the Sub-Commission should undertake a study on the topic of terrorism and human rights.

44. Mr. MAXIM said that a study on terrorism and human rights was needed, as the effects of terrorism on human dignity and the lives of people were serious violations of human rights. It was necessary to analyse the phenomenon of terrorism; terrorism was indiscriminate, claiming mostly innocent victims, and it sought to create fear, partly to prove the futility of combating it and partly to paralyse its opponents. Moreover, scientific and technological progress had made it more difficult to combat terrorism; nuclear terrorism, for example, posed a real danger to humanity. A future study should also

address the issue of State terrorism. It was well known that terrorists were sometimes manipulated to further the interests of political groups or States. Unfortunately, the work of the General Assembly on the subject had revealed a certain laxness in the approach to terrorism, which was one of the reasons why it was proving so difficult to agree on a definition. However, the work of the General Assembly also showed that States were concerned about the problem, despite progress being slow. The Sub-Commission must be realistic and acknowledge that some people, especially minorities and individuals, saw terrorist acts as a way of achieving enjoyment of their human rights. A future study should acknowledge the fact that some groups, for widely differing reasons, resorted to terrorist acts as an expression of discouragement or despair. Mrs. Koufa had recommended that the subject should be approached with "caution and modesty"; he believed it also needed to be approached with courage.

45. Mr. BOSSUYT said that Mrs. Koufa had demonstrated convincingly the need for a study on terrorism and human rights. She had rightly stressed the danger of States going beyond the ordinary law in taking counter-terrorist measures. When preventing or repressing terrorist acts, the State must act in such a way that it did not lose the moral superiority which legitimized its fight against terrorism.

46. Since terrorist acts were a cruel violation of victims' human rights, States should take effective measures to prevent them. International cooperation between police forces, and aided by the latest technology could prove necessary and useful, but no amount of cooperation or other measures could provide absolute safety from fanatical opponents prepared to sacrifice their own lives. Perhaps more effective than counter-terrorist measures as such were efforts to find just solutions to the political problems which were often at the origin of terrorist acts. Unfortunately, political conflict was often so deeply ingrained in the terrorist mind that honourable compromises were sometimes sabotaged by extremist elements. Obviously, the legitimate representatives who had negotiated such compromises must do all they could to prevent that from happening, but terrorist acts could never be eliminated altogether.

47. It was vital to react lucidly and calmly to terrorist acts, and to try to understand why the acts had been committed and with what objectives in mind. They might have been intended to bring about the collapse of an agreement, undermine the position of those who had reached an agreement or destroy the positive climate that had made an agreement possible. The worst possible reaction was to give the terrorists what they wanted, as that might lead to an increase in the number of terrorist acts. Sometimes, the outrage provoked by a terrorist act, especially one that received prominent media coverage, might make an illogical reaction appear the natural response. Leaders must react cautiously and with restraint, be clear about the objectives of the terrorists and insist that giving terrorists what they wanted was no way to combat terrorism effectively.

48. The future study should attempt to define the different forms of terrorism, consider its objectives and determine what were appropriate reactions and acceptable measures to combat it.

49. Mr. LINDGREN ALVES said that the guidelines for an in-depth study provided by Mrs. Koufa in her working paper (E/CN.4/Sub.2/1997/28) were comprehensive and testified to the actuality of the subject while wisely avoiding delving into either conceptual discourse or specific cases. Unfortunately, the term "terrorism" had been widely misused, with Governments, Latin American military rulers and colonial Powers using it to label any opposition movement that resorted to armed struggle. Such misuse of the term, which merely reinforced the conceptual confusion surrounding a phenomenon that challenged the contemporary world in an unprecedented way, was now more absurd than ever and placed those who continued to misuse it in a clearly ridiculous position. Even without a formal definition of terrorism, anyone could tell the difference between a legitimate act of violence directed against military targets and senseless aggression against unarmed defenceless civilians. Any definition of the term must bear in mind not the intent nor the agent of the acts, but the nature of the victim. Random attacks on innocent civilians were acts of terrorism whether they were carried out by government agents or opposition movements, and delegitimized both their authors and their supposed motives. Violence that was deliberately intended to create widespread insecurity could no longer be condoned on grounds of justice, self-determination or religious faith.

50. Some theoretical approaches still avoided addressing human rights violations that were not committed by States. Such approaches, once valid for their assertion of individual rights over the arbitrariness of the State, had become obsolete. For if they were still valid, how could violations of human rights be envisaged in long-established democracies, and how could the specific rights of women, so often violated by individuals and institutions unrelated to the State, be addressed? Of course, the efficacy of international action not addressed at States could be questioned, but then so could the efficacy of international law in general.

51. It was high time the Sub-Commission devoted attention to the links between terrorism and human rights violations, and sent a clear message to agents of terror that terrorist acts had no legitimacy whatsoever, and that they negated any claim to justice that their authors purported to defend.

52. Mrs. ATTAH endorsed Mrs. Koufa's working paper (E/CN.4/Sub.2/1997/28) in its entirety. Terrorism endangered the constitutional order of States and had led to massive violations of the rights of individuals and groups, including the rights to life and property, and social and economic rights. It should be studied not only in a national perspective, but also in its most dangerous form, when it was exported to other States.

53. In her own country, there were two categories of terrorist: one consisted of armed bandits operating in groups of 20 or 30 who terrorized households, and splinter groups from neighbouring States who attacked villages along the border and stole agricultural produce from women on market days. The other consisted of smaller groups, or individuals, who set off bombs in public places to spread fear among the populace, sometimes killing themselves in the process. The activities of the second category of terrorist had been limited, perhaps because of the condemnation of women's groups and all respected citizens.

54. The international community must unequivocally condemn international terrorism, since otherwise the territorial integrity and security of States would be seriously endangered, which would lead to strife and suffering, the displacement of peoples and widespread violations of their rights. The rule of law must always prevail. The export of terrorism for the purpose of overthrowing Governments was another subject that should also be examined.

55. She therefore agreed that the Sub-Commission should undertake a study of terrorism and human rights, and that Mrs. Koufa should be entrusted with that task.

56. Mr. EIDE said that Mrs. Koufa's working paper (E/CN.4/Sub.2/1997/28) had convinced him of the need for a study on the question of terrorism and human rights and that she was the right person to carry it out. Her examination of past resolutions of the Sub-Commission and the Commission on Human Rights, as well as the debates in the General Assembly since 1972, revealed the divergence of opinions on the subject. It was clear that terrorism put the State and the constitutional order, territorial integrity and security of the State at risk. Terrorists primarily operated against the Government but sometimes they were associated with parts of the armed forces as "vigilantes" or paramilitary groups; in both cases, they were a threat to the rights and freedoms of innocent people. There was a need for systematic thinking in order to establish the dividing line between "guerrilla" and "terrorists", and "national liberation movements" and so-called "self-determinationists".

57. Mrs. Koufa addressed, in paragraph 15, the important issue of the basic approach to human rights, which by many had been seen solely as to protect the individual against the State. He did not share that opinion. The State had three levels of obligations under human rights law: to respect the freedom and integrity of the individual, to protect the individual against third parties and to assist the individual in enjoying his human rights. In that connection, he would like Mrs. Koufa to address the issue of minimum humanitarian standards, or standards of civilization, to which everyone should be held accountable. He drew attention to the very important analysis in the final report of the Special Rapporteur on the question of human rights and states of emergency (E/CN.4/Sub.2/1997/19/Add.1).

58. The world was witnessing not only an increase in the number of conflicts, but also, in some places, the process of escalation of conflicts, from normal political discourse to tension, unrest, sporadic violence, hostile interaction, and, then, open and systematic violence. Mobilizing for conflict was sometimes carried out by what he termed "conflict entrepreneurs". The formation of the parties to the conflict was turbulent and unpredictable. Conflicts were usually waged not only by regular armies, but also by militias and armed civilians with little discipline and ill-defined chains of command. Groups were pitted against other groups, often without a clear front line. In some cases, the Government was one of the parties to the conflict, while in other cases it sought to mediate. Governments were sometimes split and the civilian part lost control to regular military or sometimes to paramilitary elements, while moderate elements on the opposition side who sought to build bridges were fiercely attacked and often liquidated by more radical elements.

59. Meanwhile, territorial integrity was increasingly challenged. Ethno-nationalist efforts to carve out new States led to the ugly phenomenon of ethnic cleansing. Those processes constituted a head-on challenge to the principles of equality and non-discrimination which were the foundations of human rights. The victims were to a large extent civilians, with many more children than combatants being killed. Hostage-taking, murder, arson, rape, torture and other cruel treatment were commonplace.

60. There was an obvious need to prevent disputes and tensions from turning into violence, and to prevent violence, when it erupted, from escalating into massive brutality and destruction. Avenues for peaceful political processes must be developed as an alternative to violence, and when that did not work, the use of violence must be constrained. In the context of international conflicts, humanitarian law had sought to develop the appropriate balance between military necessity and the need to avoid unnecessary suffering and destruction. However, for a variety of reasons, that approach could not easily be adopted in situations of internal conflict. Nevertheless, there was a need to articulate clearly the minimum standards of humanity below which no one should be morally entitled to go.

61. It was often argued that there was no need for international standards addressed to non-governmental entities within the State. It was considered the task of the domestic legal order to ensure compliance by all inhabitants with civil order. It was indeed one of the primary purposes of domestic law to ensure protection from murder, rape, arson and so on to everyone within the territory of the State. Unfortunately, when there was severe internal unrest, the rule of law broke down and the normal system of protection did not function.

62. While much had been written about causes of conflict, less had been said about their dynamics. There were two sides to the coin - the interaction between the challengers and the incumbent, or between the opposition and the Government. When processes of severe internal unrest occurred, they revealed a polarization process, with severe cleavage in the body politic. The machinery of law and order became a battleground in itself. Opposition groups challenged the security forces which were supposed to maintain order, while the security forces, in meeting those challenges, often shed constraints they normally respected. Thus began an evil downward spiral where traditional obedience to national law was replaced by open defiance by opposition elements, and where security forces changed from being the servants of civil society to become actors in the conflict. During states of siege or emergency, law-making power was sometimes transferred to the executive, which in turn came under the dominance of the security branch, which sometimes arrogated to itself increased control over the judiciary.

63. When society became polarized, whether on ethnic, national or religious grounds, the legal order was increasingly seen by the opposition as an instrument used for purposes of repression, a view reinforced when military tribunals were set up to administer justice or when ordinary courts were unable to ensure impartial justice. That gave credibility to the claim by militant leaders of the opposition that their group could expect no justice from the governmental legal order and that they would have to take the law into their own hands.

64. That antagonizing process could at worst lead to reciprocal demonization of whole population groups. The downward spiral into generalized violence could lead to patterns of behaviour where no distinction was made between combatant and civilian, and where children, women and the elderly were as much the target of violence as were the enemy combatants. The point was that domestic law might prove to be inadequate in times of unrest. Not only were the security forces unable to cope with the challenge, but there was also a breakdown in confidence in and respect for the domestic laws.

65. The challenge was therefore to develop standards which were above domestic law and were respected by all as being impartial, legitimate and based solely on humanitarian principles. A universal declaration on minimum standards of humanity, applicable in all situations and to be respected by all parties to any conflict, might serve that purpose. Such a declaration was before the Commission on Human Rights, and he hoped that early action would be taken on it.

66. He expressed the hope that the concerns he had outlined would be taken into account in the study to be carried out by Mrs. Koufa. He had full confidence that she would be able to steer the Sub-Commission through a conceptual minefield to advance its thinking on matters of profound importance for the realization of human rights for all.

67. Mr. KHALIL said that there was international consensus on the need to combat the global scourge of terrorism in all its manifestations, but so far there had been little agreement on its causes or, more importantly, its remedy. In the meantime, terrorists found it easy to get hold of sophisticated arms and money and continued to claim the lives of innocent civilians. Mrs. Koufa's working paper (E/CN.4/Sub.2/1997/28) shed light on the complexity of the question of terrorism and human rights, without shying away from acknowledging the existence of divergent opinions among States Members of the United Nations.

68. At the present stage, any attempt to formulate a definition of terrorism might well prove elusive and unrewarding. It might be more productive to concentrate on a more extensive enumeration of acts that could be considered terrorist, whether committed by individuals, groups and other non-State actors or by the State. In that regard, he welcomed Mr. Eide's suggestion concerning the need to articulate minimum standards of humanity. If the French resistance to German occupation during the Second World War was not considered as terrorism, one should be careful to ensure that while concurring in the condemnation and prohibition of terrorist acts, one did not derogate from the right of peoples to resist foreign occupation by all means other than terrorist acts. Furthermore, as Mrs. Koufa had suggested, it might be more productive to concentrate on investigating some of the core issues involved in the intrinsic relationship between terrorism and human rights.

69. In conclusion, he endorsed the recommendation made in paragraph 20 of the working paper in favour of a study along the lines suggested by Mrs. Koufa.

70. Mr. YIMER said that the working paper (E/CN.4/Sub.2/1997/28) was an excellent presentation of the parameters to be considered in dealing with a

complex and challenging subject which had been on the agenda of the General Assembly for the past 20 years. The lengthy debate in the Sixth Committee which had preceded adoption of the 1994 Declaration on Measures to Eliminate International Terrorism was a sign of the timeliness of the issue.

71. Drawing attention to some of the most pertinent general remarks contained in the working paper, he noted that terrorism put under threat both the State and the rights and freedoms of innocent people, and that there was an inescapable link between terrorism and human rights violations. Any consideration of the phenomenon of terrorism should start with caution and modesty. In considering the human rights dimension of terrorism, it was not only the number of its victims that should be taken into account but also the impact it had on its victims, society and the State. The actual and potential effects of terrorism became obvious in the internal or domestic legal sphere. Nonetheless, terrorism was an international as well as a domestic phenomenon. The difficulty of drawing the boundaries between what was legitimate and what was illegitimate, between the right way to fight and the wrong way to fight, had brought high political stakes to the task of definition and led to the oft-repeated phrase "one person's terrorist is another person's freedom fighter".

72. The working paper then identified several important issues which would need to be addressed if the Sub-Commission decided to undertake a study on terrorism and human rights. It was important to consider the nature of contemporary terrorism and whether there was a distinct cut-off line between the past and the present. There was a need to understand the nature of contemporary terrorism and the new breed of violence in terms of technology, globalization, brutalization and mass victimization and to realize the dangers of inflated threat perception as a means of achieving a balance between the imperatives of defending democratic society and of safeguarding human rights and freedoms. It was worth noting that those who argued for more action against terrorists as well as those who argued for limitations on Governments' responses invoked notions of human rights to support their arguments. It must also be remembered that terrorism, whether domestic or international, was a criminal phenomenon. While international human rights law dealt with the behaviour of States and government officials or their agents, modern developments in international humanitarian law, recent authoritative pronouncements and a respectable body of theory tended to modify the traditional position that private individuals or groups were not capable of violating human rights. In view of the complexity and amplitude of the human rights dimension of terrorism, it would be both premature and counter-productive to proceed with a definition until the Sub-Commission determined which issues it considered worth developing, bearing in mind that its work must not overlap with that of other United Nations bodies.

73. With regard to methodological questions, he endorsed the recommendations made in paragraphs 19 and 20 of the report and looked forward to reading the first preliminary report which would be submitted to the Sub-Commission at its next session.

74. Mr. ZHONG Shukong said that the issues relevant to the general question of terrorism and human rights were indeed numerous, complex and controversial

and that Mrs. Koufa had therefore rightly stated that any consideration of the phenomenon of terrorism should start with caution and modesty. He hoped that the preliminary report to be submitted to the Sub-Commission at its fiftieth session would provide an objective, in-depth and balanced analysis of the question of terrorism and human rights. He concurred with Mrs. Attah's remarks on State sovereignty and Mr. Khalil's remarks on the importance of non-derogation from the right of peoples to oppose foreign domination and supported the three-stage reporting process proposed in paragraph 20 of the working paper.

75. Mr. ALFONSO MARTÍNEZ said that the working paper (E/CN.4/Sub.2/1997/28) was a good initial study of the question. It was important for the preliminary report to be submitted to the Sub-Commission at its fiftieth session to recognize that terrorism always had causes, which might in themselves be ethically justified (for example, the fight against colonialism) or unjustified (for example, the traffic in drugs). Some of those causes were addressed in paragraph 8 of the report, and he hoped that they would be studied in depth in the preliminary report. Furthermore, he wondered whether it was possible to eliminate terrorism through purely judicial measures.

76. The second sentence of paragraph 4 (d) of the working paper was problematic in that it seemed to suggest that only non-State actors could commit acts of terrorism and that similar acts, when committed by agents of the State, could be qualified only as human rights violations. He strongly disagreed with that position; not only in Latin America but, in recent years, also in Europe, terrorist acts had been committed by agents of the State at the federal, state and municipal levels, and such acts of terrorism were likely to increase in the coming years. He wondered whether Mrs. Koufa did, in fact, believe that State terrorism existed and hoped that she would clarify that issue in her preliminary report.

77. It was also somewhat disturbing that the references cited in the notes to the working paper consisted primarily of Government-sponsored resolutions and legislation, which were unlikely to recognize that States could be guilty of terrorism. He hoped that the preliminary report would include a wider range of documentation.

78. Mr. BOREL (International Committee of the Red Cross - ICRC), speaking on agenda item 11 (c) (i), said that the international community's horror at the effects of widespread use of poisoned gas during the First World War had resulted in the 1925 Geneva Protocol prohibiting gas warfare.

79. Currently, a similar process of stigmatization was occurring in response to the horrendous effects of anti-personnel landmines, which continued to kill and maim tens of thousands of men, women and children, the majority of them civilians each year in dozens of countries round the world. In the early 1990s, the ICRC had become convinced that landmines had created a medical, human and social catastrophe of epidemic proportions wherever they had been used on a large scale. As with any epidemic, it was not enough to treat the victims; as long as the use of such mines continued, the epidemic would continue to spread.

80. In October 1996, the Canadian Government had brought together 50 States to develop a strategy for a global prohibition of anti-personnel landmines and had invited those States to return to Ottawa in December 1997 to sign a treaty outlawing such weapons. At a follow-up conference held at Brussels in June 1997, 97 States had signed a declaration which constituted a political commitment to negotiate a treaty outlawing anti-personnel landmines at Oslo in September 1997. The Oslo Diplomatic Conference, to be held in September 1997, would offer the international community an opportunity to conclude a new international humanitarian law treaty unequivocally banning the production, transfer, stockpiling and use of anti-personnel landmines. Such an international legal norm, if established without exceptions, reservations or loopholes, would send a clear signal to all States, even those that wished to retain landmines for their own armed forces, that the anti-personnel mine could no longer be considered a legitimate weapon of war.

81. While some States might initially be reluctant to join in a prohibition, many, probably the majority would endorse and respect such a ban. To date, more than 100 countries - the majority of the world's Governments - had expressed their support for a global prohibition on anti-personnel mines, 30 countries had unilaterally renounced or suspended the use of those mines by their own armed forces and 17 were destroying their stockpiles. In 1996, the Organization of American States had called for the establishment of the Americas as a regional zone entirely free of anti-personnel mines, and Central America expected to achieve that goal by the year 2000. Efforts were under way to launch similar initiatives in other forums, such as the Council of Europe and the Southern African Development Community. At an Organization of African Unity conference in May 1997, 41 African countries had called for an end to new deployment of anti-personnel mines, the swift conclusion of the Ottawa process and intensified efforts to rid Africa of the scourge of landmines.

82. The public pressure essential to stop the use of any weapon of war had apparently reached a critical mass with regard to anti-personnel mines. But it was above all the speed and decisiveness with which States took action to eliminate the use of those mines that would determine the fate of hundreds of thousands of civilians far into the next millennium. The Oslo Diplomatic Conference was a clear test of the international community's will to rid the world of the scourge of anti-personnel landmines. The ICRC sincerely hoped that in the interests of the many thousands of victims, present and potential, the Conference would agree to put an unequivocal end to the use of a weapon whose military value was, to say the least, debatable. Anything less would be a betrayal of the aspirations of millions of people worldwide.

The meeting rose at 1.05 p.m.